

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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|-------------------------|---|---------------------------|
| ALAN DORENBOS, |) | CASE NO.: C07-0492-RSM |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | REPORT AND RECOMMENDATION |
| |) | |
| ATTORNEY GENERAL OF THE |) | |
| STATE OF WASHINGTON, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

INTRODUCTION AND SUMMARY CONCLUSION

Petitioner Alan Dorenbos brings this action under 28 U.S.C. § 2254 to challenge his 1992 King County Superior Court conviction for second degree murder. Respondent has filed an answer to the petition in which he asserts that this Court lacks jurisdiction over petitioner's federal habeas petition. Following a careful review of the briefs of the parties, and the balance of the record, this Court concludes that because petitioner is no longer in custody, petitioner's petition should be dismissed, with prejudice, for lack of subject matter jurisdiction.

BACKGROUND

In October 1992, petitioner was found guilty, following a jury trial, on one count of murder in the second degree in violation of RCW 9A.32.050(1)(a). (Dkt. No. 11, Ex. 1 at 1.) In

01 December 1992, petitioner was sentenced to a term of 164 months confinement. (*Id.*, Ex. 1 at 3.)
02 Petitioner was also sentenced to serve a term of community placement following his release from
03 confinement. (*Id.*, Ex. 1 at 6.) Petitioner was released from confinement in April 2004, to begin
04 serving his term of community placement. (*Id.*, Ex. 2 at 1.) Petitioner completed his term of
05 community placement in April 2006. (*Id.*, Ex. 3.) Petitioner filed the instant federal habeas
06 petition in April 2007.¹ (*See* Dkt. No. 1.)

07 GROUND FOR RELIEF

08 Petitioner identifies a single ground for relief in his federal habeas petition:

09 [T]he defendant was denied the due process protections of the 5th and 14th
10 Amendments when the State falsified irreplaceable material exculpatory evidence and
committed misconduct by allowing the jury to hear fraudulent, tampered evidence.

11 (*See* Dkt. No. 1, Attachment to Petition at 1.)

12 DISCUSSION

13 Respondent asserts that this Court lacks subject matter jurisdiction over petitioner's federal
14 habeas petition because petitioner is no longer "in custody" for purposes of federal habeas review.
15 The record supports this assertion.

16 Subject matter jurisdiction under 28 U.S.C. § 2254 is limited to those persons "in custody
17 pursuant to the judgment of a State court." 28 U.S.C. § 2254(a); *Brock v. Weston*, 31 F.3d 887,
18 889 (9th Cir. 1994). Once a petitioner's sentence has fully expired, he is precluded from
19 challenging that sentence because he is no longer "in custody" for purposes of federal habeas
20

21 ¹ This is petitioner's third federal habeas petition. Two previous petitions were dismissed,
22 without prejudice, for failure to exhaust state court remedies. (*See* C00-839-TSZ and C03-2984-
JCC.)

01 review. *Maleng v. Cook*, 490 U.S. 488, 492 (1989). The collateral consequences of an expired
02 conviction, while sufficient to preclude mootness, are not sufficient to satisfy the “in custody”
03 requirement of § 2254. *Feldman v. Perrill*, 902 F.2d 1445, 1448 (9th Cir. 1990)(citing *Maleng*
04 *v. Cook*, 490 U.S. at 492). *See also, Carafas v. LaVallee*, 391 U.S. 234 (1968).

05 The “in custody” requirement of § 2254 may be met even if the petitioner is not physically
06 confined. *Dow v. Circuit Court of the First Circuit*, 995 F.2d 922, 923 (9th Cir. 1993), citing
07 *Jones v. Cunningham*, 371 U.S. 236, 239-40 (1963). *See Jones*, 371 U.S. at 240-43 (parole
08 tantamount to custody); *Hensley v. Municipal Court*, 411 U.S. 345, 348-49 (1973)(release on
09 personal recognizance pending appeal satisfies “in custody” requirement); *Dow*, 995 F.2d at 923
10 (mandatory attendance at alcohol rehabilitation program satisfies in custody requirement); *Barry*
11 *v. Bergen County Probation Department*, 128 F.3d 152 (3rd Cir. 1997)(community service
12 obligation rendered petitioner “in custody” for purposes of habeas statute). However, in order to
13 satisfy the custody requirement, the “petitioner must demonstrate that he is subject to a significant
14 restraint upon his liberty ‘not shared by the public generally’” *Dow*, 995 F.2d at 923, quoting
15 *Jones*, 371 U.S. at 240.

16 The record makes clear that petitioner has served his prison term and has completed his
17 term of community placement. Petitioner has not identified any collateral consequences of his
18 conviction which are sufficient to render him “in custody” for purposes of federal habeas review.

19 CONCLUSION

20 Petitioner fails to demonstrate that he is subject to any form of restraint sufficient to
21 constitute custody for purposes of federal habeas review. Accordingly, this Court recommends
22 that petitioner’s federal habeas petition be dismissed, with prejudice, for lack of subject matter

jurisdiction. A proposed order accompanies this Report and Recommendation.

DATED this 24th day of October, 2007.

A handwritten signature in black ink, appearing to read "Mary Alice Theiler", written over a horizontal line.

Mary Alice Theiler
United States Magistrate Judge